JUDICIAL COUNCIL

OF BRITISH COLUMBIA

ANNUAL REPORT

2002 & 2003

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JUDICIAL COUNCIL

OF BRITISH COLUMBIA

ANNUAL REPORT

2002 & 2003

Judicial Council of British Columbia

The Honourable Geoff Plant
Attorney General
PO Box 9044 Stn Prov Govt
Victoria, BC V8W 9E2

Dear Mr. Attorney:

I present herewith the Annual Report of the Judicial Council of British Columbia for the years 2002 and 2003. The activities of the Judicial Council during this period include the review of 96 applications for appointment as provincial court judge, and 52 applications for appointment as judicial justice of the peace. In addition, the Council interviewed 68 applicants for the position of provincial court judge and 9 applicants for the position of judicial justice of the peace.

A total of 55 complaints were examined pursuant to section 11(2) of the *Provincial Court Act* and resolved at the examination stage. Two matters proceeded to the investigation stage under section 11(3), and were resolved at that stage. Summaries of these complaints are contained in this report.

The Judicial Council has continued since its 2001 Report to fulfill its mandate of maintaining a high quality of justice in the Provincial Court of British Columbia, through the performance of its objects and functions under section 22 of the *Act*.

This report is published in keeping with the Court's tradition of accountability, transparency and public access to information. It will be posted on the Provincial Court website, http://www.provincialcourt.bc.ca/judicialcouncil/index.html. Additional copies may be obtained through the Office of the Chief Judge.

Sincerely,

The Honourable Carol Baird Ellan
Chief Judge and Chair, Judicial Council of British Columbia

Table of Contents

1. Introduction 1

2. Meeting Schedule & Business Conducted 2

3. Appointment Process for Judges 4

4. Appointment Process for Judicial Justices of the Peace 11

5. Appointment Process for Court Services Justices of the Peace 14

6. Appointment Process for Judicial Case Managers 15

7. Former Office of Stipendiary Justice of the Peace 15

8. Judicial Education 16

9. Strategic Planning 20

10. Complaints 21

Appendices

A Procedure Bylaw 30

B Statutory Provisions Governing Complaints 33

(Left to right) – David A. Paul, Q.C., Christopher M. Considine, Q.C., Administrative Judge Margaret E. Rae, Associate Chief Judge Anthony J. Spence, Chief Judge Carol Baird Ellan, Peter J. Wilson, Q.C., and Judicial Justice of the Peace Phillip Lim. Underneath: Elizabeth (Betsy) Gibbons, C.C. (Kip) Woodward.

1. Introduction

The Judicial Council of British Columbia is a statutory body created by the *Provincial Court Act*, R.S.B.C. 1996, Chap. 379. The object of the council is to improve the quality of judicial service, and its functions include considering proposed Lieutenant Governor in Council appointments of judges, judicial justices of the peace and justices of the peace; conducting inquiries respecting judges, judicial justices of the peace, and justices of the peace; considering proposals for improving the judicial services of the Court; continuing the education of judges and organizing conferences of judges; preparing and revising, in consultation with the judges, a code of ethics for the judiciary; and reporting to the Attorney General on the matters the Attorney General considers necessary.

The nine members of the Judicial Council prescribed by the *Act* are the chief judge as presiding member; an associate chief judge as alternate presiding member; the treasurer of the Law Society of British Columbia or a person nominated by the treasurer; the president of the British Columbia Branch of the Canadian Bar Association or a person nominated by the president; and, by appointment of the Lieutenant Governor in Council for a term of not longer than 3 years, a judge and not more than 4 other persons.

The Judicial Council entered its 34th year on July 21, 2003. The members of the Council at December 31, 2003, and the dates of their appointment to the Council, were as follows:

1. The Honourable Carol Baird Ellan, Chief Judge and presiding chair, July 7, 2000.
2. The Honourable Anthony J. Spence, Associate Chief Judge, alternate presiding member, June 21, 2002.
3. Peter J. Wilson, Q.C., nominee of the president of the Law Society of B.C., January 8, 1998.
4. David A. Paul, Q.C., Past President of the Canadian Bar Association, B.C. Branch, January 1, 2003.
5. The Honourable Administrative Judge Margaret E. Rae, Past President of the B.C. Provincial Court Judges' Association, January 1, 2003.
6. Christopher M. Considine, Q.C., December 18, 2002.
7. Elizabeth (Betsy) Gibbons, December 18, 2002.
8. C.C. (Kip) Woodward, December 18, 2002.
9. Phillip Lim, Judicial Justice of the Peace, April 14, 1994.

The members of Judicial Council for 2002 were Chief Judge C. Baird Ellan, Associate Chief Judge H.C. Stansfield (replaced by Associate Chief Judge A.J. Spence on June 21, 2002), Judge W.J. Rodgers, Judicial Justice of the Peace P. Lim, Mr. P.J. Wilson, Q.C., Mr. Carman J. Overholt, Q.C., Professor M.J. Callahan (term expired May 31, 2002), Councillor J.B. Braithwaite (term expired May 31, 2002), and Dr. W.M. Kendal (term expired May 12, 2002).

2. Meeting Schedule & Business Conducted

The Judicial Council meets approximately once monthly in the Judicial Council Boardroom at the Office of the Chief Judge, Suite 501 - 700 West Georgia Street, Vancouver, BC V7Y 1E8. Meetings generally take a full day. At most meetings, the Council reviews applications for appointment of judges and justices of the peace, and conducts interviews of candidates.

The following was the meeting schedule for 2002 and 2003.

2002	2003
February 15	January 23
March 1	March 6
April 5	March 28
May 31	April 11
July 19	May 23
October 25	June 20
November 15	July 18
December 13	September 19
	October 24
	November 21
	December 12

The number of applications for provincial court judge and justice of the peace reviewed and interviews held per year are shown in the charts on the following page. The figures reflect the Council's activities in the year, and therefore may include reviews, interviews or appointments of candidates who applied in a previous year.

In addition to interviews and the review of applications, the Council attends to ongoing business at its meetings. Topics in the past two years have included strategic planning, review of the judicial justice of the peace appointment process, meeting with the chairs of the Judicial Advisory Committee of the Canadian Bar Association, BC Branch, and review of the educational leave policy for judges.

JUDICIAL COUNCIL ACTIVITIES SUMMARY

Applicants for Appointment as Provincial Court Judge

	Applications Received			Pending Applications Reviewed			Applicants Approved for Interview			Applicants Interviewed			Applicants Approved for Appointment		
Year	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
2002	44	27	17	56	39	17	34	25	9	35	27	8	17	15	2
2003	52	40	12	47	31	16	27	19	8	33	23	10	19	12	7

Applicants for Appointment as Judicial Justice of the Peace

	2002	2003
Applications received	4	48
Applicants interviewed	0	9
Applicants approved	0	7

Applicants for Appointment as Justice of the Peace

	2002	2003
Applications reviewed	3	14
Applicants approved	3	12

3. Appointment Process for Judges

Pursuant to section 6 of the *Provincial Court Act*, judges are appointed by the Lieutenant Governor in Council, on the recommendation of the Judicial Council. The process of receiving a recommendation commences with an application to the Judicial Council. The application and approval process are described below.

When a vacancy arises, the chief judge, as chair of the Judicial Council, provides the Attorney General with the names of recommended candidates who are eligible to sit in the region or district where the appointment will be made.

Candidates may be recommended for appointment if approved by the Council in any of the three years preceding the recommendation. In 2002 and 2003, 8 recommended candidates received appointments.

Criteria

The following are the Judicial Council's stated criteria for applicants for appointment as a provincial court judge:

1. Normally 10 years in the practice of law. Those with less legal practice are considered if they have a range of related experience.

2. Legal reputation, including reference from the Canadian Bar Association and judges before whom the applicant has appeared, and review of professional record from the Law Society of British Columbia.

3. General knowledge of and experience in the law and provincial court procedure, preferably with recent practice in criminal, family and/or civil litigation.

4. Experience in mediation or alternative dispute resolution.

5. Willingness to learn and demonstrated commitment to continuing professional education.

6. Knowledge of and sensitivity to current issues facing the courts, the judiciary and the justice system.

7. Ability to listen and communicate effectively.

8. Personal characteristics, such as decisiveness, evenness of temperament, fairness, open-mindedness, and common sense.

9. Compassion for those coming before the court and an understanding of their circumstances.

10. Respect in the community.

11. Good health.

12. Passion and enthusiasm.

13. Balanced relationships with peers and subordinates.

14. Adaptability and flexibility with respect to job changes.

15. Humility.

16. Appreciation of and experience with diversity.

17. Demonstrated dedication to public service.

18. Ability to cooperate and work with others.

19. Understanding of the role of the court in society and respective roles of the judiciary and other participants in the justice system.

20. Willingness to travel and to sit in all subject areas.

Application and Approval Process

Applications for judicial appointment are submitted on a Judicial Candidate Information Summary, which may be acquired through the Office of the Chief Judge at Suite 501 – 700 West Georgia Street, Vancouver, BC, or from the Provincial Court web site[1]. Applicants are provided with a package of materials containing an application form and information regarding the application and interview process, to ensure that applicants understand and consent to the extensive investigation that will be initiated with the making of an application.

The chief judge requests a Bar report on every new applicant, from the Advisory Committee to Judicial Council, a committee of the B.C. Branch of the Canadian Bar Association. Generally, updated reports are also sought in respect of re-applicants[2]. In preparing the Bar report, members of the CBA committee make thorough and discreet inquiries of members of the legal community regarding the applicant's reputation and suitability.

The Judicial Council also requests a report on the applicant's standing from the Law Society, and comments from judges who are familiar with the applicant or who sit in the area in which the applicant practises.

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[1] http://www.provincialcourt.bc.ca/judicialofficers/judgesofthecourt/appointmentprocess/index.html

[2] Applicants may reapply three years after a prior application or interview.

Once the Bar report is received, generally within a few months of the application being made, the Council will review the application and make a decision as to whether to interview the applicant. Three members' votes in favour of an applicant are required, in order to grant an interview. Candidates are not notified if they are not approved for an interview.

Candidates who are approved for an interview are generally interviewed within a year following the date of their application, though in some cases the Bar report is delayed beyond that for one reason or another. The Council is currently up to date on interviews of applicants whose reports have been received and reviewed, i.e. it has no backlog of applicants approved for interview, once the Bar report is received.

Interviews are approximately 45 minutes to one hour. The members of the Council ask applicants a series of questions designed to assist in assessing whether they meet the criteria set out above, and to address any issues raised in the Bar, Law Society or judges' reports.

Following the interview, the members review the candidate's application, the Bar and Law Society reports, and comments received from judges, and decide by a vote whether to approve the candidate. Motions are either in favour of or against approval. In either case, two members' votes against approval defeat the candidate, regardless of the number of members present.

Applicants are not notified as to whether they are approved for appointment. Applicants who are not approved for interview may reapply three years after the date they originally applied. Applicants who are interviewed may reapply three years after the date of their interview. Many applicants reapply at least once before receiving an appointment.

The Judicial Council made some revisions to the approval process in 2000 and 2001. These are fully described in the 1999 – 2001 Annual Report[3]. The Council members felt that a "raising of the bar" was necessary, in recognition of the increasingly complex and varied nature of the Court's work, the accelerating workloads, and expanding administrative demands placed upon judges of the Court.

Given the Council's prescribed object of improving the quality of judicial service, the approval process must ensure that only exceptional applicants who are unquestionably capable of meeting these increasing demands be recommended for appointment.

The chart on the following page shows the history of applications, interviews and approvals over a six-year period, providing an indication of trends in application rates and a comparison of candidate approval rates before and after the change in the approval process. These figures reflect the Council's activities in the year specified, which include reviews and interviews of applicants from the prior year, and are not reflective of the results of applications made in a particular year.

[3] http://www.provincialcourt.bc.ca./downloads/pdf/judicialcouncilannualreport1999,2000,2001.pdf

Applicants for Appointment as Provincial Court Judge
1998 -- 2003

	Applications Received			Applications Reviewed			Applicants Approved for Interview			Applicants Interviewed			Applicants Approved		
Year	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
1998	70	44	26	59	37	22	40	25	15	29	22	7	13	10	3
1999	63	39	24	69	46	23	46	28	18	35	18	17	16	9	7
2000	52	29	23	54	28	26	36	17	19	43	22	21	23	14	9
2001	75	56	18	53	43	10	39	32	7	38	26	12	12	10	2
2002	44	27	17	56	39	17	34	25	9	37	28	9	17	15	2
2003	52	40	12	47	31	16	26	18	8	33	23	10	19	12	7

The average number of applications received per year for the six years to 2003 was 59; however, the number of applications appears to be decreasing. Before the end of 2000, the three-year average number of applications was 62, while after, it was 57. The two years with the highest application rates were 2001, which represented an all-time high of 75 applications, and 1998, at 70. These were both years in which a judicial compensation committee made a recommendation for a significant increase in judicial salaries, suggesting that such increases are effective in encouraging applications. Excluding those two years, the average for the remaining four years was 53, and for 2002 and 2003, 48.

The average number of applications reviewed for interview each year was 56, and of those, 37 per year, on average, or 66% of those reviewed, were approved for interview. The average number of applicants interviewed each year was 36, of which 17 were approved on average, resulting in a six-year average approval rate of about 48% of those interviewed, and about 31% of total reviewed applications.

Comparing pre-2001 and post-2000 results of reviews and interviews reveals that the change in process referred to above has had a slightly dampening effect on approval rates. Approvals for interview pre-2001 totaled 122 out of 182 reviewed applications, or 67%. Post-2000, approvals for interview totaled 99 out of 156 reviewed applications, or 64%. Approvals following interview occurred at the rate of 49% pre-2001, and 45% in the three years after 2000, resulting in a pre-2001 overall approval rate of 33% and a post-2000 overall approval rate of 29%.

The average number of judges appointed per year for the six years to 2003 was 6.3, or about 11% of total applicants, and about 38% of annual approvals. In the last two years, however, there were only 8 appointments in total, or roughly 8% of average annual applicants and 23% of average annual approvals.

Demographics

Throughout the years 2002 and 2003, Judicial Council had an average pool of approximately 39 approved applicants. At the end of December 2003, this pool consisted of 41 candidates, of which 31 were men and 10 women. Thirty of the approved candidates came from the Lower Mainland or South Vancouver Island, and most of those indicated that they preferred appointments to the southern portion of the province.

While each of the thirteen administrative districts of the Court was represented in the pool, and some of the applicants from populous areas were willing to relocate, many Court locations were not represented by resident candidates, or candidates willing to relocate to that location. Candidates who were willing to relocate were more often male than female.

It is the policy of the Council to assess all applicants equally in relation to the appointment criteria, and not to allow the decision to interview or approve an applicant to be affected by a candidate's willingness to relocate to a hard to fill area. However, the application process may be expedited for a candidate in a hard to fill area with an upcoming vacancy.

The average age of applicants to the Court in the last five years was about 48, with an average of 18 years in practice. This broke down by gender to 48 for males and 44 for females. The average age and years of practice for appointees in that period were about 49 and 20 respectively.[4]

The average ages of applicants are increasing over time, as shown in the following chart of applicants by age and gender in 2002 and 2003. The average age of male applicants rose to 51 in the period, and of females, to 48.

Applicants to Judicial Council by Age and Gender
2002-2003

Year	Total	Male	%	Average Age	Female	%	Average Age
2002	44	27	62%	50	17	38%	46
2003	52	40	77%	51	12	23%	48

Female applicants have on average about 5 years less practice experience than male applicants, and proportionately more women applicants come from the public sector (see below) and therefore have a narrower range of practice experience. According to the 2002 Law Society Annual Report[5], the profession is 32% women; however, women continue to leave the profession in larger numbers than men. The percentage of women with over 10 years legal experience is not known. Assuming the attrition rate identified by the Law Society translates into a lower proportion of women in the over-10-year category, Judicial Council application and

[4] See Judicial Council Annual Report, 1999 – 2001, at http://www.provincialcourt.bc.ca/downloads/pdf/judicialcouncilannualreport1999,2000,2001.pdf , p. 9
[5] http://www.lawsociety.bc.ca/library/report/docs/2002AnnualReport.pdf

approval rates would seem to be a reasonable reflection of gender representation in the profession.

Of the eight applicants who were appointed in 2002 and 2003, all were male, with an average experience level of about 23 years. Of the 8 appointments, half were to the interior or northern part of the province, and of those, 3 were candidates who relocated from the southern part of the province to accept the appointment.

Applicants by Gender and Area of Practice

	2002			2003		
	Total	**M**	**F**	**Total**	**M**	**F**
Private Practice	31	21	10	39	32	7
Crown Counsel	7	3	4	9	6	3
Other Areas of Practice	6	3	3	4	2	2

Diversity

Prior to 2001, the application form included an invitation to applicants to indicate on a voluntary basis whether they were members of diversity groups, including race and culture, disability and sexual orientation. The revised form contains a general question about the applicant's experience with cultural and ethnic diversity, which generally elicits applicants' own experience as members of diversity groups, and also better addresses item 16 of the Criteria for Appointment.

The breakdown of profile information received from applicants since 2001 is 9 members of self-reported diversity groups (out of 44 applicants) for 2002, and 9 (out of 51 applicants) for 2003. Most of those who self-reported as members of diversity groups were members of visible racial minorities. Applicants therefore consisted on average of about 19% members of self-reported diversity groups. The pool of approved applicants at the end of 2003 included 6 applicants from these groups, or 15%. It is difficult to say whether the number of applicants or approvals is reflective of the level of diversity among eligible applicants, as the Law Society does not include figures for diversity in the profession in its Annual Report.

Comparison of New and Renewed Applications

As stated above, applicants who are not appointed may reapply after three years, and often do so. The breakdown of applications based upon the number of new and renewed applicants is shown in the following chart. The figures shown in each column reflect the outcome of applications received in the year noted.

New and Renewed Applications by Year and Sector

	1998	1999	2000	2001	2002	2003
NEW APPLICATIONS:	56	47	37	53	32	37
Private Practice	39	32	27	37	22	27
Approved after an interview	12	11	5	8	5	**
Public Sector and Other Areas	17	15	10	16	10	10
Approved after an interview	2	3	4	7	4	**
RENEWED APPLICATIONS:	14	16	15	22	12	15
Private Practice	12	14	10	16	9	13
Approved after an interview	3	5	2	5	3	**
Public Sector and Other Areas	2	2	5	6	3	2
Approved after an interview	*	*	*	*	*	**

* These figures are not reported in order to maintain confidentiality.

** Not all persons applying in 2003 had been interviewed by year end, therefore these figures are incomplete, and have not been reported.

Though it may be difficult to identify a trend in light of the low overall numbers, the annual number of new applicants would appear to be declining. Those from private practice remain steady at about 70% of applications, however, new applications approved from private practice have fallen from 12 in 1998 to 5 in 2002, and from 85% to 56% of new approvals.

If one assumes that qualified applicants who meet the appointment criteria are approved by the Council, the total of approved applicants (hence qualified applicants) in 2002 was at a *maximum* 15 applicants (assuming all renewed public sector applicants were approved), or 29% of total applicants. Based on current Law Society figures for lawyers with 10 years or more in practice, at over 6100, total qualified applicants in 2002 would have been at most .25% of those eligible to apply. New qualified applicants were 17% of applications and less than .15% of those eligible.

4. Appointment Process for Judicial Justices of the Peace

Judicial justices of the peace are appointed by the Lieutenant Governor in Council on the recommendation of the Judicial Council, as are judges. They are assigned by the chief judge to preside over matters within their statutory jurisdiction (see below), which include traffic and other ticket offences, some municipal bylaw matters, payment hearings in Small Claims Court, and applications for bail and search warrants.

Formerly called sitting justices of the peace, judicial justices of the peace (JJPs) received a new designation by amendments to the *Provincial Court Act* in April 2001. These amendments occurred in response to two decisions of the B.C. Supreme Court. The first, (*Reference re Sitting Justices of the Peace*, 2000 B.C.S.C. 1470, Sigurdson J.) declared the former office of sitting justice of the peace to have insufficient safeguards of judicial independence to perform the judicial duties assigned to them. The second, (*R. v Do*, 2001 B.C.S.C. 1088, Hutchinson J.) held that justices of the peace employed by the Court Services Branch of the Ministry of the Attorney General, who at that time heard applications for search warrants, also did not have sufficient safeguards of judicial independence to perform their assigned duties.

In response to these decisions, the office of judicial justice of the peace (JJP) was created by the Legislature in April 2001. Amendments to the *Provincial Court Act* permitted the Lieutenant Governor in Council, on the recommendation of the Judicial Council, to designate a justice (defined in the *Act* as a justice of the peace) as a "judicial justice", and gave that office security of tenure and financial security. The newly created JJPs were assigned by the chief judge to hear traffic court cases (as sitting justices of the peace had done previously), and also to perform duties related to search warrants and bail, primarily by telecommunications. Those justices of the peace who were formerly sitting justices of the peace were designated by the legislation as judicial justices of the peace, and a number of new JJPs were also appointed.

Many of the Court's JJPs are now assigned to the Justice Centre in Burnaby, which provides 24-hour, 7-day-a-week access for police officers and Crown Counsel seeking search warrants, and for bail hearings of arrested persons. When at the Centre, JJPs issue federal and provincial search warrants by FAX and telecommunications, and preside over bail hearings, also by telecommunications. The 24-hour staffing of the Centre enables police forces throughout the province to obtain search warrants in a timely way, and facilitates the expeditious consideration of the custodial status of persons who have been arrested and detained.

On July 1, 2003, an amendment to the *Provincial Court Act* was passed which removed the jurisdiction of JJPs to hear certain matters, including applications under the *Canadian Charter of Rights and Freedoms*, and offences that may result in imprisonment.[6]

The Justice Centre and traffic division of the Court are supervised by the Office of the Chief Judge, and the appointment process for JJPs is similar to that for judges. The criteria for appointment are the same for both components of the office, i.e. the Justice Centre and traffic

[6] See *Provincial Court Act*, R.S.B.C. 1996, c. 379, section 2.1

sitting duties, and JJPs are appointed to perform both sets of duties. A law degree or post-secondary education is not a pre-requisite for appointment as a JJP, though some JJPs have university degrees and several have law degrees.

The Judicial Council reviews applications, conducts interviews, and approves JJP candidates for appointment and the chief judge sends to the Attorney General the names of approved candidates recommended for appointment to available vacancies, in a process similar to that for judges outlined above. Applications for JJP positions may be submitted at any time or may be solicited by a recruitment campaign for a specific vacancy.

When received, applications are initially reviewed by the Judicial Council or a Select Committee of the Council, to decide whether the applicant will be interviewed. Candidates are not advised of that decision except through receipt of an invitation to attend for interview. Candidates who are interviewed are not advised whether they have been approved as eligible for appointment.

Since 2001, the Council has maintained a pool of approved applicants similar to the pool for judges. Approvals remain valid for three years. Applicants are eligible to reapply after 3 years from the later of the date of their previous application or the date of their interview, if any.

Appointment Criteria

The appointment criteria for judicial justices of the peace are as follows:

1. 10 years in the BC justice system, or commensurate experience.
2. Must hold a justice of the peace commission or be eligible for appointment as a justice of the peace in British Columbia.
3. Reputation within the BC justice system, including references, from the Bar, Judiciary, and other relevant bodies.
4. Ability to listen and communicate effectively.
5. Personal characteristics, such as decisiveness, evenness of temperament, fairness, open-mindedness, and common sense.
6. Demonstrated dedication to public service.
7. Understanding the role of the court in society and respective roles of the judiciary and other participants in the justice system.
8. Willingness to travel and perform all assigned duties including shift work.
9. General knowledge of and experience in the law and provincial court procedures and subject matters.

10. Compassion for those coming before the court and an understanding of their circumstances.

11. Adaptability and flexibility with respect to job changes.

12. Respect in the community.

13. Humility.

14. Balanced relationships with peers and subordinates.

15. Ability to cooperate and work with others.

16. Appreciation of and experience with diversity.

17. Willingness to learn and demonstrated commitment to continuing professional education and development.

18. Knowledge of and sensitivity to current issues facing the courts, the judiciary and the justice system.

19. Good health.

20. Passion and enthusiasm.

21. Experience in mediation or alternative dispute resolution.

Applications for appointment as a judicial justice of the peace are submitted on a Judicial Justice of the Peace Candidate Information Summary. A sample form may be found at www.provincialcourt.bc.ca/judicialofficers/justicesofthepeace/appointmentprocess/index.html.

If an applicant is granted an interview, it takes place at the Office of the Chief Judge. Each member present asks the applicant a series of questions designed to assess their suitability, and to address any issues raised in the application. Following the interview, the members consider the candidate's application, the comments of their references, and any comments received from judges, and decide whether to approve the candidate.

The average age of applicants appointed as judicial justices of the peace in 2001, 2002 and 2003 was 46. Applicants are not asked to self-report membership in diversity or minority groups. Approximately 18% of appointees in the years 2001 to 2003 were members of visible minorities or known diversity groups. Four were male and seven were female.

5. Appointment Process for Court Services Justices of the Peace

Court Services justices of the peace work in Court registries throughout BC. Besides their justice of the peace duties, which are assigned by the chief judge, they hold various administrative positions in the Court Services Branch of the Ministry of the Attorney General including court manager, administrator and court clerk.

The applicable process for appointment is as follows:

a. A court manager in the relevant location will contact the Office of the Chief Judge (in writing) when they need a justice of the peace appointment, for instance, to fill a vacant position or to accommodate an increase in workload.

b. In the case of a vacant position, the position is usually posted as a government posting, and a competition is held. The successful candidate will submit an application to Judicial Council for appointment as a justice of the peace.

c. When the application is received, it is reviewed by the Office of the Chief Judge staff to ensure it is properly completed and to identify any potential problems with the candidate such as conflicts of interest. A police record check is also conducted.

d. The application is then forwarded to the administrative judge in the relevant district with a request that he or she confirm the need for the appointment and interview the candidate according to the following guidelines:

    (1) The applicant's existing relationship (if any) with the local police or sheriff which may impede his/her independence. Does the candidate know of any potential conflict of interest concerning this position that may impede his/her ability to perform justice of the peace duties?

    (2) Ability to learn, communicate effectively and make independent decisions.

    (3) Willingness to attend courses, i.e. 5 or 6 days basic training and 2 days every second year advanced training.

e. If the administrative judge is satisfied on these points, he or she will submit his/her recommendation to Judicial Council.

f. The administrative judge's recommendation and court manager's request for the appointment, together with the application, are submitted to Judicial Council for approval.

g. Applicants for Court Services justice of the peace appointments are not generally interviewed by the Council. If the candidates are approved by Judicial Council they are invited to attend the basic training course. If successful in the course, they are recommended for appointment.

6. Appointment Process for Judicial Case Managers

Judicial case managers (JCMs) are employees of the judiciary who perform case management or judicial scheduling functions. They are required to hold a justice of the peace commission as part of their qualifications for the position. When an applicant becomes a potential candidate for employment as a JCM through a government posting process, the applicant must apply for a JP commission. The application proceeds through the Judicial Council approval process in a fashion similar to that for Court Services justices of the peace described above.

7. Former Office of Stipendiary Justice of the Peace

The former office of stipendiary justice of the peace [7] no longer exists in the province of British Columbia. Prior to November 2002, stipendiary JPs worked part time during non-court hours on a call-out basis, hearing bail and search warrant applications for a monthly stipend. Most held full-time occupations in addition to their weekend and evening responsibilities for the Court. Since 1999, no new appointments of stipendiary JPs had been made and stipendiary JPs were not replaced when they retired, their duties being reassigned to the 24-hour Justice Centre (see section 4) as part of a process to provide a central model of justice delivery.

Further, in light of concerns regarding their judicial independence arising from the case law described in section 4 above, in November 2002 the chief judge issued a letter to the 54 remaining stipendiary JPs in the province revoking their assignment of duties. The Attorney General subsequently provided them with notice and terminated their commissions.

[7] See 1999-2001 Judicial Council Annual Report, p. 14

8. Judicial Education

Judges' Education

New judges receive a three to four weeks orientation program consisting of travel to various districts in the province, mentoring by experienced judges and court observations. They are also sent in the first year of appointment to the New Judges' Training Program presented by the Canadian Association of Provincial Court Judges in Quebec, and often to one other conference on an area of law in which they may lack practice experience.

Thereafter, new judges and other judges are required to attend semi-annual education conferences presented by the BC Association of Provincial Court Judges, and may also request education leave of up to 5 days, and use their professional allowance to attend approved educational conferences relevant to their judicial duties.

These seminars are presented by the Association's Education Committee, in the Spring and Fall, and last for two and one-half days each, ending with a Saturday morning session. The topics covered include recent trends in the law, social context training, mediation skills, new legislation and issues of concern to judges and the public.

The sessions in the Spring and Fall of 2002 and 2003 covered a wide range of topics, some of which are listed below. The fall 2003 conference was combined with the conference of B.C. Supreme Court Judges.

Recent topics have included:

- Strategic Planning for Provincial Court
  - Governance
  - Jurisdiction and Divisions
  - Quality of Justice
  - Access to Justice
  - Judicial Resource Allocation
  - Facilities/Security/Technology

- Conference on Family Law
  - Family Law for Those Unfamiliar with the Concepts
  - REMO to ISO/International Child Abduction
  - What's New in CFCSA
  - Children's Adjustment to Separation
  - Using Research to Make Age Appropriate Custody and Access Decisions
  - Issues in Mobility Cases
  - Resistance, Refusal to Visit and Child Alienation
  - Dealing with Resistant Parents and Children re Access
  - Domestic Violence: Research Updates and Considerations
  - Introduction and Overview: The New *Youth Criminal Justice Act*

- A Historical Perspective on "Young Offenders" and Youth Law
- Parliament, what were they thinking?
- BC PCJ "Problem Solving" Web Site
- Overview of Electronic Benchbook
- The Crumbling Lawyer/Crumbling Colleague, who can you call?
- CCFM Rules
- Common Criminal Law Problems
- Ergonomics for Judges
- Judicial Independence, Theory and Experience
- The Impact on Judges of Reform to Access to Justice
- Self-Represented: Nuts and Bolts (law)
- Self-Represented: Cultural and Psychological Issues
- Professional Life of a Judge
- Family: Interviewing Children: the Do's, Don'ts, and Should You's
- Criminal – Wrongful Convictions and Eyewitness Identification

All judges of the Court also received special training on the new *Youth Criminal Justice Act* in the spring of 2003, at special sessions held in various locations in the province, presented by members of the Court and other participants trained through the National Judicial Institute. These programs were presented with the assistance of the Department of Justice Canada.

Several judges als ıttend regular French language training each year. These sessions were held in Quebec in January and August 2002 and January, May and October 2003.

A number of courses are sponsored by the Office of the Chief Judge and coordinated and presented by judges of the Court and guest presenters. These include mediation and advanced mediation training, and delivery of reasons. Mediation courses were presented on August 30 and November 19, 2002, and Delivery of Reasons courses were presented in November 2002 and March and October 2003.

As stated, individual judges may use their professional allowance and education leave to attend additional education programs, including out-of-province courses and seminars on topics related to their judicial duties. In the past two years judges have attended courses on the following topics:

- Evidence and Fact Finding
- National Criminal Law Program
- Charter of Rights Workshop
- Managing Successful Settlement Conferences
- Judicial Dispute Resolution
- Restorative Justice
- Family Law Seminar
- Judgment Writing
- Social Context Training

The Provincial Court of British Columbia continues to be at the forefront of judicial education for judges in Canada. The continuing success of the Court's education programs is due to the volunteer efforts of the Association's Education Committee and the many judges who participate on a volunteer basis at the conferences. Judges also participate in educational programs, panels and seminars for continuing legal education to assist in educating judges from other courts and provinces, members of the bar, and the public, on a regular basis. Details of the judges' participation in public legal education is contained in the Court's Annual Reports[8].

Judicial Justice of the Peace Education

Judicial justices of the peace are provided with training or orientation specific to their assignments and experience levels upon appointment. Generally this takes the form of observation and on-the-job training, in relation to bail and search warrants, and courses in law and criminal procedure as well as observation, in relation to traffic hearings. Judicial justices of the peace are involved in training to ensure they are able to act in the entire range of matters to which they may be assigned.

The judicial justices of the peace also attend semi-annual education seminars presented by the Judicial Justices Association Education Committee. The committee arranges presentations by JJPs, members of the bar, judges and other guest speakers. In recent years the legal officer to the chief judge has also made a presentation at these conferences dealing with recent legal issues of relevance to JJPs. The topics covered in 2002-2003 were:

- Oral Reasons for Judgment
- Strategic Planning
- Mental Disorders
- Administrative Independence
- Rules of Evidence
- The Philosophy of Law
- Driving Prohibitions, Question & Answer Session
- Natural Justice
- Bail/Detention
- Call Centre Duties for JJPs
- Quicklaw Refresher
- Question and Answer Question Session with the Attorney General
- Youth Criminal Justice Act
- Search Warrants
- Strict Liability/Due Diligence
- Small Claims Rules
- Offence Act and Evidence Act

Court Services Justice of the Peace Education

The Justices of the Peace who are appointed as Court Services Justices of the Peace receive training through a Basic JP Course prior to their appointment, and then receive ongoing on-the-job training and experience in the conduct of their duties, as well as support in the form of a JP manual issued by the Office of the Chief Judge and available assistance from the legal officer to the chief judge. During the years 2002-2003, two justice of the peace basic training programs

[8] http://www.provincialcourt.bc.ca/

were held at the Office of the Chief Judge on March 31 to April 2, 2003 and October 29 to 31, 2003.

Judicial Case Manager Education

The judicial case managers (JCMs) of the Court have an annual conference presented by the Office of the Chief Judge under the supervision of the administrative JCM. Ongoing, on-the-job training and support are also provided by the administrative JCM.

9. Strategic Planning

In February 2003, the Provincial Court completed a strategic planning process, with the publication of the Report of the 2001/2002 Judiciary Planning Committee and Three-Year Strategic Plan, 2002 – 2005[9]. The Plan was presented by the chief judge to the Judicial Council at its March 28, 2003 meeting. One of the topics covered by the Plan was that of Quality of Justice, a subject within the objects of the Council.

The recommendations relating to Quality of Justice included revision of the recruitment and appointment process and criteria for judicial justices of the peace, review of the Court's library resources, a request that the Judicial Council endorse an increase of non-sitting education days, enhanced orientation, training and mentoring programs for new judges and JJPs or those who wish to sit in new subject areas, clarification of the roles of the Council and the Judges' and JJPs' Associations in relation to education and the quality of judicial service, and exploration of a judicial self-evaluation program.

The Council did revisit the issue of the JJP appointment process and revise the criteria following receipt of the Strategic Plan, but it is still considering a recommendation that a consultant be retained to review these issues in light of recent case law relating to the office of justice of the peace. The Council also endorsed the recommendation regarding education leave for judges. Some of these recommendations have already been addressed by the Office of the Chief Judge, such as obtaining feedback on the new judges' orientation and mentoring programs and a review of library resources. Other items remain on the Council's or chief judge's agenda for the upcoming year.

[9] http://www.provincialcourt.bc.ca/downloads/pdf/Judicialplanningcommiteereport2001_2002.pdf

10. Complaints

Under the *Provincial Court Act*, the chief judge has the power and the duty to supervise the judges and justices of the peace, and is required under section 11(2) to examine all complaints respecting judges and justices of the peace. The chief judge must report in writing to the complainant and the judicial officer following an examination.

The *Act* also requires in section 11(3) that the chief judge conduct an investigation respecting the fitness of a judge or justice of the peace to perform his or her duties if the chief judge considers that an investigation is required, or if directed to do so by the Attorney General. The result of an investigation may include corrective action or an order for an inquiry respecting the fitness of the judge or justice to perform their duties.

The specific role of the Judicial Council in complaints, in addition to its general object of improving the quality of judicial service, relates to the conduct of an inquiry. A judge or justice who is the subject of an inquiry may elect under section 24(1) of the *Act* to have the Council or a judge of the Supreme Court designated as the tribunal for the inquiry.

As chair of the Judicial Council, the chief judge traditionally reports on the outcome of complaints to the Council and this report is included in the Council's Annual Report.

Complaints are required by the *Act* to be delivered in writing to the chief judge. All letters to the chief judge which contain potential complaints are assessed by the legal officer to the chief judge to ascertain whether they come under the authority of the chief judge to examine under the *Act*. In considering allegations of misconduct, reference is made to the Judges' *Code of Judicial Ethics*[10], the Canadian Judicial Council's *Ethical Principles for Judges*[11], and the Justice of the Peace *Code of Ethics*[12]

Often, letters contain complaints about the outcome of proceedings or the merits of a decision by a judge or justice of the peace. Principles of judicial independence prevent interference by anyone, even a chief judge, in the judicial decision-making process. Judges must be free to make decisions unfettered by outside influence, fear of sanction or hope of favour, and it is not open to a chief judge or Judicial Council to review judicial decisions.

It is only through the process of appeal or application for review to a higher court that the content and correctness of judicial decisions may be challenged. Accordingly, requests for a review of the evidence, new trials, reversal of decisions, or sanctions for erroneous decisions are all matters for appeal and not properly the subject of complaints to the chief judge. Such letters receive a response describing the authority of the chief judge and suggesting the writer make inquiry about their rights of review or appeal and any applicable time limits.

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[10] http://www.provincialcourt.bc.ca/dowloads/pdf/codeofjudicialethics.pdf

[11] http//cjc-ccm.gc.ca/english/publications/ethic_e.pdf

[12] http://www.provincialcourt.bc.ca/downloads/pdf/justiceofthepeacecodeofethics.pdf

Of the many letters received in the Office of the Chief Judge annually, few contain allegations relating to judicial conduct or issues that are properly reviewable by the chief judge. In addition to complaints about judicial decisions, many letters relate to other courts or institutions, lawyers, media stories or administrative issues. These receive a general response, usually from the legal officer, explaining the complaints authority of the chief judge and providing any information that may be of assistance to the writer.

If a letter is identified as a potential complaint within the authority of the chief judge, the chief judge will commence an examination and invite the judge or justice of the peace to comment on the complaint. The chief judge will review the complaint letter, any relevant material such as a transcript of the proceedings, any response received from the judge or justice of the peace, and provide a report to the complainant and judge or justice of the peace. Most complaints are resolved with a letter explaining or acknowledging the conduct and, in some cases if appropriate, providing an apology.

As stated above, if the matter does not end at the examination stage it may proceed to an investigation, and then possibly to an inquiry. In the history of the Court there have only been 8 inquiries, and there have been none since 1981.

During the relevant years, 276 letters of complaint were received at the Office of the Chief Judge. On assessment, 218 matters were found not to be complaints within the authority of the chief judge. Examinations were commenced on the remaining matters. Including complaints carried over from 2001, 54 examinations were completed in the years 2002 and 2001, and 14 remained outstanding at the end of 2003. Of the 54 completed examinations, all were resolved at the examination stage. These activities are summarized in the chart below, and summaries of the completed examinations are provided on the following pages.

An investigation may be commenced based on information received by the chief judge and need not be initiated by a letter of complaint. In 2002 and 2003, two such investigations were conducted. Both were resolved at the investigation stage. Summaries of these investigations follow the examination summaries below.

COMPLAINT STATISTICS – 2002 and 2003

	2002	2003
Letters received	124	152
Non-complaints (those found not to be within Section 11)	101	120
Examinations performed (complaints) as summarized below	23	31
Files unresolved at December 31	11	14

COMPLAINT EXAMINATION SUMMARIES - 2002

1.	The complainant alleged that the judge presiding at this settlement conference interrupted and would not listen to him and asked him questions about his knowledge of the law in a manner which he believed detracted from the fairness and impartiality of the proceedings.	Examination revealed that the judge was professional, but insisted that complainant confine comments to relevant matters. Judge provided apology and recognized complainant was offended; stated did not intend to be other than fair and courteous. Complainant was given explanation of purpose of settlement conference; judge's duty to confine issues, and advised of judge's apology.
2.	Judicial justice of the peace sent emails to colleagues critical of a member of the Judiciary staff.	Judicial justice of the peace was instructed regarding JP Code of Conduct, including duty to respect others, and acknowledged misconduct.
3.	Judge had complainant taken into custody for contempt in response to a disrespectful outburst. The complainant alleged the judge's order was without cause.	The tapes of the proceedings disclosed that the judge was patient and respectful, warned the complainant, and acted appropriately. The complainant was advised accordingly.
4.	In preliminary application, a judicial justice of the peace misunderstood a youthful litigant, and mistakenly stated that there were "grave concerns" about his credibility. The father of the litigant complained about the derogatory comment and expressed concern about bias if the judicial justice of the peace heard upcoming trial.	Judicial justice of the peace apologized for the misunderstanding and inappropriate comment. Complainant was provided a copy of the apology, and advised that any concern regarding bias should be raised in Court in an application for recusal before the judicial justice of the peace.
5.	Complainant alleged that judge was biased against him and had a conflict of interest because he had dealt with him on prior occasions.	Complainant was advised that upon examination, there was no evidence of bias or conflict of interest on the part of the judge, and that while complainant was represented at trial, his lawyer had not applied for recusal. No misconduct found, matter was one properly raised on appeal.

6.	Traffic Court defendant alleged judicial justice of the peace displayed bias toward Crown and against her, treated her unfairly and inconsistently with defendant in a prior case, by imposing a higher fine.	A review of the transcript established complainant's case was different from prior case; that a higher mandatory fine applied in complainant's case, and that claim of discrimination was unfounded.
7.	Complainant expresses concern that judicial case manager (a justice of the peace) was rude and inappropriate in connection with complainant's attempts to fix a date.	Administrative Judge met with judicial case manager (JCM) to discuss appropriate behaviour, and JCM offered apology for having upset her. Complainant was advised JCM had been spoken with and had provided an apology, and that it appeared behaviour was unlikely to be repeated.
8.	Allegation that judicial justice of the peace refused to hear matters within authority and assignment of judicial justices of the peace.	Justice of the Peace Code of Ethics, specifically Rules 1:04 and 1:05 were brought to the attention of the judicial justice of the peace, who was directed to perform duties as assigned.
9.	Small Claims creditor complained judge's conduct of payment hearing was unfair, biased and prejudicial.	Complainant advised that while judge was assertive in directing creditor as to examination of the debtor and arguably could have been more patient, creditor was permitted to fully examine debtor and elicit all relevant information, and judges often find it necessary to direct creditors in examination of debtors.
10.	Court Services JP provided letter to police asserting would not perform duties contained in JP assignment, based on JP's view of judicial independence.	JP advised that in absence of legal decision establishing issue regarding judicial independence, duties remain assigned, and Code of Ethics requires JP to perform them.
11.	Litigant in a traffic hearing matter complained that he felt humiliated and morally abused by judicial justice of the peace.	Letter of apology provided by judicial justice of the peace and sent to complainant.
12.	A non-party filed transcripts and materials relating to a contested matrimonial case alleged that the judge had a conflict of interest because lawyers from judge's former firm were involved in the case, also alleged that the judge had out-of-court communications with parties or witnesses, and received documents and photographs about the case.	Judge denied bias or out-of-court communications, pointed out that no members of judge's former firm were involved in the case, and that while judge had recused self from further hearings, this decision was based on submissions made by the parties on the record, not for reasons of bias or conflict, and that reasons were provided. Allegations accordingly found to be specious, and complainant so advised.
13.	Complaint that judge was rude and condescending, belittled litigant, and would not allow her to give a statement she had prepared.	Tape of proceedings reviewed and allegations found to be without foundation. While somewhat stern and forthright the judge explained reasons for various rulings and gave complainant ample opportunity to address the Court. Judge interrupted but only in attempt to get the complainant to focus on questions.
14.	Unsuccessful applicant for custody complained judge was biased because judge's daughter ran bible study for girls known to one of the parties.	Judge advised does not know girl in question; no bias found.

15.	Judge delayed in delivering reasons in sensitive custody case; counsel complained.	Judge explained reasons and cited personal issues (now resolved); found to be an isolated event and not likely judge would delay unduly in future.
16.	Complaint that judge and Crown Counsel involved in an intimate personal relationship.	Complaint was completely unsupported; found to be unfounded and entirely speculative.
17.	Accused wrote to judge enclosing money for estimated fine and refusing to attend trial after judge allegedly prejudged matter and belittled him at trial confirmation hearing.	Money returned and complainant advised he was required to attend; that trial judge would be a different judge; and that judge at trial confirmation hearing asked only appropriate questions regarding case to confirm it would proceed as scheduled.
18.	A party who would not step into court (but instead wished to raise a jurisdictional issue from the court gallery) complained that judicial justice of the peace refused to permit him to appear in this fashion.	While judicial justice of the peace acted with dispatch and certainty in dealing with the litigant, conduct in admonishing him was found to be entirely appropriate. Complainant advised.
19.	Complaint that judge at a settlement conference subjected litigant to "overbearing remonstrance and chastisement," while the other party was "pampered and placidly attended to subserviently," resulting in disrespect to the litigant.	Examination revealed that judge had advised litigant the claim was overbroad when he claimed an excessive amount including ambulance expenses and hospitalization of his wife due to a noisy and defective microwave, and that judge did remonstrate litigant when he was rude to other parties. Litigant advised that judge's actions appropriate.
20.	Judicial justice of the peace spoke with representative of prosecution in court after dismissing a case, to discuss deficiencies in prosecution for future cases, and in absence of defendant. Defendant complained.	Judicial justice of the peace's action found to be inappropriate. Defendant advised no further action in view of assumption that JJP would "take instruction" from letter. JJP has since retired.
21.	Allegation that a Court Services JP misled, discriminated against or treated disrespectfully an individual who was seeking return of items seized under a search warrant.	JP correctly informed complainant of the appropriate procedure under the Criminal Code. No evidence to suggest the JP misled the complainant regarding the appropriate procedure, or discriminated against the complainant.
22.	Allegation that judge intimidated complainants due to friendly rapport with counsel for another party.	Allegation not supported. Judge did not know lawyer and sought to develop rapport with all the parties.
23.	Allegation that judicial justice of the peace was angry and threatening to a defendant in court.	A review of transcript of proceedings and tape of proceedings showed that defendant was treated with fairness and respect. Advised accordingly.

COMPLAINT EXAMINATION SUMMARIES - 2003

1.	Complaint by claimant at settlement conference that judge did not dismiss defence, and failed to note admissions by parties, as permitted by Small Claims Court Rules.	Complainant advised that settlement conference intended to settle matters or prepare for trial and that it was rare to dismiss a claim or defence at this stage; that decision to dismiss or not dismiss a claim or defence at this stage, or record admissions, are matters within judge's discretion.
2.	Complaint suggested judge was involved in a conspiracy before appointment as a judge.	Allegation unsupported and denied by judge; determined to be unfounded.
3.	Police officer complained that judicial justice of the peace refused to deal with a warrant application by telephone, and refused to speak to the police officer.	Complaint acknowledged and officer advised that judicial justices of the peace have been instructed that where certain warrants are sought via telephone, JJP should speak directly with the officer to assess priority and whether applying by telephone is appropriate.
4.	Police complained that judicial justice of the peace verbally abused officer, and made derogatory comments about detachment.	Judicial justice of the peace denied being unprofessional but apologized if the member had that perception. Complainant given copy of response.
5.	Prosecutor complained that a judicial justice of the peace at the 24-hour Justice Centre refused to conduct a telephone bail hearing and required that the matter be heard the next day in Court.	It was determined that the difficulties were a result of a breakdown in communication between the Justice Centre and the prosecutor, who failed to advise JJP that matter was ready to be heard.
6.	Complaint by litigant about a judicial case manager's (JCM's) unduly abrupt manner in scheduling a case for trial.	Behaviour found to be an awkward effort to diffuse a difficult situation. Situation acknowledged and explained to complainant. JCM instructed re more desirable approach.
7.	Alleged that judicial justice of the peace threatened, insulted, humiliated and belittled complainant, and insulted her by offering her one to two years to pay small fine.	On review of tape of proceedings, it was determined that judicial justice of the peace was trying to maintain control of proceedings and may have appeared abrupt but did not act in the manner alleged, and that time to pay was one to two months, not years as alleged. Found that JJP was being solicitous, not insulting.
8.	Police complaint about rejection of search warrant applications with no ability to discuss with judicial justice of the peace the reason for the rejection.	Complaint acknowledged and complainant advised that judicial justice of the peace has amended approach and now accepts calls from the police to clarify written reasons for refusal.
9.	Officers complained that judicial justice of the peace refused to deal with warrant application near the end of shift, and delay resulted.	Judicial justice of the peace advised he informed officer of procedure to follow if matter not ready by end of shift, and did not refuse to hear application at any time. Not clear that officer advised JJP matter was urgent and ready to be heard. Complaint acknowledged and police and JJPs advised to ensure matters properly prioritized.

10.	Complaint that judicial justice of the peace was curt to police officer who applied for warrant outside JJP's jurisdiction, suggesting officer read the *Criminal Code*.	Judicial justice of the peace acknowledged complaint and apologized if appeared curt, explained jurisdictional issue. JJP's response conveyed to officer.
11.	Police complained about apparent inconsistent practices between judicial justices of the peace on warrants with respect to medical records.	Complaint acknowledged and police advised that issues of comity and consistent practice will be placed on the agenda for future JJP education sessions.
12.	Police complaint that judicial justice of the peace refused to clarify reasons for rejection of a search warrant.	Complaint acknowledged and police advised that issue of providing reasons would be placed on the agenda for future JJP education sessions.
13.	Officer complained that judicial justice of the peace was agitated and condescending.	Matter examined and found to involve lengthy transaction in which mistakes were made by both, frustrations ran high, and nothing inappropriate was said. Explanation provided to complainant.
14.	Police complained that judicial justice of the peace was bad tempered during application for a DNA warrant.	Judicial justice of the peace acknowledged complaint and intends to deal with future applications in a better fashion. Response conveyed to complainant.
15.	Complaint that judge at settlement conference was biased and did not rule on the claim.	No evidence of bias. Complainant advised judge not required to rule on claim; that there is limited time at settlement conference; parties have a full opportunity to present case before a different judge at trial.
16.	Complainant said judge did not listen and told him to shut up.	Tape of proceeding revealed that the judge did listen to the complainant and at no time told the complainant to shut up.
17.	Counsel at initial appearance complained that judicial case manager (JCM) refused to allow him to fix a trial date.	Examination disclosed that the court location had established days of the week for counsel to fix trial dates, and initial appearances were scheduled on a different day. The lawyer was attempting to fix a trial date on an initial appearance day. JCM was correct in following the procedure of finishing initial appearance duties before dealing with counsel's request to fix a trial date.
18.	Alleged that judicial justice of the peace treated complainant abruptly, did not consider his submissions, and adjourned his request to fix a new trial date in order to set an even later trial date.	Examination did not support allegations, revealed JJP was appropriate, and the trial scheduler was not available to fix a trial date so the complainant would have had to come back to fix a date in any event.
19.	Complaint regarding procedural decisions made by trial judge and how complainant was treated, in a contested family matter.	Examination established that judge treated parties with an even hand. Complaints relating to conduct of trial and procedural decisions not reviewable.
20.	Traffic disputant says judicial justice of the peace was inappropriate and overbearing to point of unfairness (though the ticket was dismissed).	Judicial justice of the peace apologized fully and gave personal reasons for behaviour, advised was taking steps to address them, and has learned from experience. In light of this

		response, complainant advised of apology and that recurrence unlikely.
21.	Complaint that judge dismissed claim without grounds at settlement conference and conference conducted in a manner that favoured lawyer known to judge.	Judge provided response explaining reasons for summary dismissal, which was made in exercise of judicial discretion, and denied favoring the lawyer, with whom judge had no connection.
22.	Complaint related to judicial justice of the peace not permitting complainant to act as agent without written authorization from defendant, and suggesting complaint to Law Society to be made.	Judicial justice of the peace spoke to complainant in measured and respectful manner in deciding whether the complainant could act as agent. While it may have been unnecessary to suggest complaint to the Law Society, the comments in this regard arose in the context of decision on the complainant's agency status, and were not inappropriate.
23.	Complaint that judge belittled and intimidated complainant at settlement conference by commenting on expense of court time.	Judge denied belittling or intimidating complainant and explained intent was to encourage settlement. Complainant provided with judge's response and advised that not unusual for judge to comment on expense of court time in effort to settle.
24.	Complaint that claim dismissed at settlement conference without reasonable grounds; that judge did not listen and that decision left complainant upset, belittled and undermined.	Complainant advised that judge has jurisdiction to dismiss a claim at a settlement conference and remedy was in appeal. Complainant's concerns were drawn to attention of Judge, but no misconduct found and decision not reviewable.
25.	Allegation that judicial justice of the peace was rude and angry with court registry staff; made disparaging comments about an administrative judge.	JJP apologized to staff member. JJP instructed regarding JP Code of Ethics and admonished regarding conduct.
26.	Complaint that reasons not provided for a judicial justice of the peace decision to deny an extension of time under s.16(2) of the *Offence Act*.	Complainant advised that legislation does not require written reasons, and decision of JJP not reviewable.
27.	Judicial justice of the peace required defendant to take witness stand while allowing police officer to testify from counsel table; interrupted defendant's submissions to assert integrity of police constable; and made disparaging comments about defendant's credibility. Appeal Court found trial unfair and brought matter to attention of chief judge.	Judicial justice of the peace had in meantime read transcript and offered gratuitous apology; apology passed on to prosecutor and appellate judge. Concluded that JJP understood misconduct and had taken instruction from experience; procedural aspects of case included in training materials for JJPs.
28.	Party at settlement conference complained that he felt demeaned and ridiculed by judge.	Judge provided response explaining policy of assertively attempting settlement and apologized if offended. Complainant advised of purpose of settlement conferences, that would have different judge at trial, and judge's apology conveyed.
29.	Counsel in bail hearing complained that judge threatened to detain client in response to counsel's submissions.	Judge apologized and said it was not his intent to offend counsel or to infer that his submission ought not to have been made. Conveyed to complainant.

30.	Complainant alleged that judge arrived at strong views regarding the merits of a claim at a settlement conference.	Review disclosed that judge's approach was appropriate. Complainant advised, instructed re: settlement conference process, and informed that would not have same judge for trial.
31.	Complaint that judge allowed complainant to be bullied, abused and harassed in cross-examination.	Transcript reviewed and comments of judge received. Clear nothing untoward in cross-examination, which while rigorous at times, at no time warranted intervention by the judge. Complainant advised.

Investigation Summaries

In addition to the above examinations of complaints, two matters proceeded to investigation under section 11(3) in 2002 and 2003.

The first related to an allegation in July 2002 that a judge was under criminal investigation for sexual offences. The chief judge directed an associate chief judge to conduct an examination of the complaint, and based upon the outcome of the examination, an investigation was commenced. The section 11(3) investigation was postponed following confirmation of the existence of a criminal investigation and to await its outcome. The judge resigned in October 2002. The investigation was concluded without a recommendation or any further action as the judge was no longer subject to the authority of the chief judge under the *Act*. Charges have since been laid against the judge.

The second investigation related to a letter written by a judge to a newspaper, criticizing the media and the Attorney General. The chief judge conducted an investigation and concluded that the judge's behaviour likely violated a number of ethical principles, such as the duty to act in a reserved manner, the duty to behave irreproachably and in a manner that promotes public confidence in the integrity and impartiality of the judiciary, the duty of impartiality, and the duty to refrain from openly criticizing the quality of the administration of justice. However, pursuant to section 11(4) of the *Provincial Court Act*, the chief judge recommended that no judicial inquiry was required, as it was unlikely that the conduct would be repeated, and this isolated incident in an otherwise unblemished career would not likely result in the judge's removal. While there is no formal power of reprimand under the *Provincial Court Act*, it was the view of the chief judge that the effect of the investigation would be the same, and that no further corrective action was required other than an expression of regret to the Attorney for the remarks relating to him. The judge retired in 2003.

APPENDIX A

Procedure Bylaw

In this bylaw:

(1)"Applicant" means an applicant for appointment as a provincial court judge.

(2)"Council" means the Judicial Council of British Columbia.

(3) "Chair" means the Chief Judge or the alternate presiding member, appointed under the *Provincial Court Act*, where the Chief Judge does not attend a meeting of the Council.

1. The Council is a continuing body notwithstanding any change in membership. The Council may complete any proceedings commenced before a change in membership.

2. The majority of the members of the Council is a quorum. A quorum must be present to hold any meeting, or to pass any resolution.

3. All powers of the Council may be exercised by resolution. An act or proceeding of the Council is valid when authorized or adopted by resolution at a meeting of the Council, provided that:

   (a) A resolution to approve an applicant for appointment will be defeated if any two members vote against approval. A resolution that an applicant not be approved for appointment will succeed if two or more members vote in favour of the resolution. Members present for such resolutions may not abstain.

   (b) A resolution to approve an applicant for interview will succeed if any three members vote in favour of the resolution.

   (c) To pass any other resolution at a meeting of the Council there must be a majority vote of the quorum in favour of the resolution. Each member has one vote but in the event of a tie, the Chair must cast a second and deciding vote.

4. Where any member has a conflict with respect to an applicant, or where there may be a reasonable apprehension of bias in respect of a member, that member shall be disqualified from participating in the interview of the applicant, and shall not participate in any vote with respect to the applicant. Such member shall refrain from involvement in all proceedings or discussions relating to the applicant. Any question regarding whether a member is in a conflict or whether there is a reasonable apprehension of bias shall be resolved by general resolution. If disqualification of a member through conflict or bias reduces the number of members present below a quorum, the interview or vote in respect of the applicant must be adjourned to a time when a quorum is present.

5. The Chair will preside at all meetings of the Council, except when the Chair is not available, in which case, the alternate presiding member must preside.

6. The Council will meet approximately 10 times per year, as scheduled from time to time by the members at a meeting. Notice of the time and place of meetings will be given by the Chair to each member. Any member may attend any meeting of the Council.

7. The Council and its committees may meet in person, via telecommunications or a combination of both. All in person meetings of the Council will be held in Vancouver unless the Council resolves to hold a meeting elsewhere within British Columbia. All in person meetings of committees of the Council will be held in British Columbia at a place resolved by each committee. Notwithstanding the above, all meetings involving interviews of candidates or matters of discipline of judges shall be done in person.

8. Meetings of the Council will be private and confidential, but the Council may invite non-members to attend all or part of a meeting of the Council, except a meeting or a part of a meeting at which candidates are interviewed or votes are taken.

9. The Chair will preserve order at meetings and decide all points of order which may arise, subject to an appeal of any other member present. If an appeal is taken by a member from a decision of the Chair, the question will be decided without debate by a majority vote of the quorum.

10. A bylaw relating to the procedure of the Council may be made or amended by a general resolution passed at a meeting of the Council of which written notice was given in advance to all members.

11. The minutes of all meetings of the Council will be distributed to the members, adopted by resolution at the next meeting of the Council, and then signed by the Chair.

12. Where appropriate, the agenda of meetings of the Council will include:
    (a) minutes of previous Council meetings or committee meetings;
    (b) matters arising out of the minutes;
    (c) communications and inquiries;
    (d) reports from the Chair, or a committee;
    (e) applications for appointment;
    (f) disciplinary matters;
    (g) new business;
    (h) approval of expenses;
    (i) next meeting.

13. The Council may from time to time by general resolution establish standing committees, as required. The chair of each standing committee will be named by the Chief Judge, and the Chair and the members will be approved by the Council.

14. In addition to the standing committees, the Chair, or Council by general resolution, may establish a select committee to consider any matter. The Chair will name the chair of

such committees and the Council may name its members. A select committee may only consider the matter specifically referred to it by the Council or by the Chair.

15. The proceedings of all committees will be subject to the approval of the Council. The minutes of all committee meetings will be circulated to all members of the Council in advance of the Council meeting next following the meeting of the committee.

16. Minutes of a committee and resolutions set out in a committee's minutes will be deemed approved by the Council as of the date of the next Council meeting following their circulation, unless a Council member requests the Chair to call a vote at such meeting. The effective date of a committee resolution must be no earlier than the date of the next Council meeting following the meeting of the committee.

17. Except for judicial members, a member attending a meeting of the Council, a meeting of a committee or other business on behalf of the Council as authorized by the Chair, is entitled to receive payment of an allowance in such amount the Lieutenant Governor in Council considers appropriate, and any travel or out-of-pocket expenses.

18. This bylaw does not apply to the Council acting as a tribunal of inquiry under the *Provincial Court Act*.

19. With respect to procedural issues not covered by this bylaw, *Roberts Rules of Order* shall govern.

Procedure Bylaw adopted this 23rd day of March, 2001 at a meeting of the Judicial Council of British Columbia.

APPENDIX B

Statutory Provisions Governing Complaints

Provincial Court Act, R.S.B.C. 1996, Chap. 379

Powers and duties of chief judge

11 (1) The chief judge has the power and duty to supervise the judges, justices and court referees and, without limiting those powers and duties, may do one or more of the following:

(a) designate the case or matter, or class of cases or matters, in which a judge, justice or court referee is to act;
(b) designate the court facility where a judge, justice or court referee is to act;
(c) assign a judge, justice or court referee to the duties the chief judge considers advisable;
(d) exercise the other powers and perform other duties prescribed by the Lieutenant Governor in Council.

(2) Subject to section 25 (2), all complaints respecting a judge, justice or court referee must be directed in writing to the chief judge who, after examining the complaint, must report in writing to the complainant and to the judge, justice or court referee.

(3) The chief judge must conduct an investigation respecting the fitness of a judge, justice or court referee to perform his or her duties if

(a) the chief judge considers that an investigation is required, or
(b) the chief judge is directed by the Attorney General to conduct an investigation.

(4) On completing an investigation under subsection (3), the chief judge may

(a) take any corrective action that the chief judge considers necessary using the powers given the chief judge under this Act, or
(b) order that an inquiry be held respecting the fitness of the judge, justice or court referee to perform his or her duties

and the chief judge must submit to the Attorney General a written report setting out the nature of the investigation, relevant facts, the findings and any corrective action taken.

(5) If the chief judge orders an inquiry under subsection (4) (b), the chief judge must give written notice together with a copy of the report prepared under subsection (4) to the judge, justice or court referee.

If an inquiry is ordered

24 (1) Within 14 days of being notified under section 11 (5) or 23 (2) of an inquiry, the judge, justice or court referee involved must elect as a tribunal to conduct the inquiry either

(a) the council, or

(b) a judge of the Supreme Court to be designated by the Chief Justice of the Supreme Court.

(2) If the judge, justice or court referee fails to elect within the period referred to in subsection (1), the inquiry tribunal is the council.

(3) After the tribunal is constituted, the Attorney General must give any legal counsel retained under section 27 (4) a copy of the report made by the chief judge under section 11 (4).

(4) If an inquiry is ordered, the judge, justice or court referee involved is suspended from all duties with salary unless the chief judge orders that the suspension be without salary.

(5) A chief judge or associate chief judge who has conducted an investigation under section 11 (3) must not sit as a member of the council on an inquiry respecting the same matter.

Complaints respecting chief judge

25 (1) Sections 11 and 24 do not apply to a complaint or investigation respecting the chief judge.

(2) A complaint respecting the chief judge must be directed to the Attorney General who, after examining the complaint, must report in writing to the complainant and to the chief judge.

(3) If the Attorney General orders an inquiry under section 23 (1) respecting the fitness of the chief judge, the inquiry must be held before a tribunal consisting of a judge of the Supreme Court to be designated by the Chief Justice of the Supreme Court, and sections 26 to 28 apply.

(4) If an inquiry is ordered, the chief judge is suspended from all duties with salary unless the Attorney General orders that the suspension be without salary.

Scope of inquiry

26 In conducting an inquiry, the tribunal may consider all matters relating to a judge, justice or court referee that are relevant to the fitness of the judge, justice or court referee to perform his or her duties including the following:

(a) mental or physical disability;
(b) misconduct;
(c) failure in the execution of his or her office;
(d) conduct incompatible with the due execution of his or her office.

Inquiry procedure

27 (1) While an inquiry under this Act, a tribunal has the protection, privileges and powers of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

(2) An inquiry under this Act must be held in public unless the tribunal considers, in the public interest, that the inquiry or any part of it should be held in private.

(3) If an inquiry is to be held, the tribunal must give the judge, justice or court referee

(a) reasonable notice of the time and place of the inquiry,
(b) particulars of the matter being inquired into, and
(c) the opportunity, in person or by counsel, to be heard, to cross examine witnesses and to adduce evidence.

(4) For the purposes of an inquiry, the tribunal may retain legal counsel and determine counsel's remuneration, which must be paid out of the consolidated revenue fund without an appropriation other than this section.

(5) If the judge, justice or court referee resigns after an investigation has been commenced under section 11 (3) or an inquiry has been ordered under section 11 (4) or 23 (1), the investigation or inquiry must be completed unless the Attorney General orders otherwise.

Powers of the tribunal

28 (1) On the conclusion of an inquiry, the tribunal may order

(a) reinstatement of the judge, justice or court referee, with or without a reprimand,
(b) suspension of the judge, justice or court referee, with or without salary, for a further period of not longer than 6 months, or
(c) removal of the judge, justice or court referee from office.

(2) If a judge, justice or court referee is reinstated, and if during the suspension he or she did not receive his or her salary, the tribunal may order that the salary for the suspension period be paid to him or her.

(3) The tribunal must promptly notify the judge, justice or court referee involved, the chief judge and the Attorney General in writing of its order and the reasons for the order and must forward a copy of the order and reasons to the registrar of the Supreme Court, Vancouver, for publication.

(4) An order under subsection (1) (c) for the removal of a judge, justice or court referee is effective

(a) when an appeal under section 29 is dismissed, or
(b) when the time for an appeal has expired.

Appeals to Court of Appeal

29 Within 30 days after the notice under section 28 (3) was mailed or personally served on him or her a judge, justice or court referee may appeal to the Court of Appeal from an order made under section 28 (1), and the Attorney General is respondent in the appeal.